IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18980 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ? - **No.**
2	To be referred to the Reporter or not ? - **No.**
3	Whether their Lordships wish to see the fair copy of the judgment ? - **No.**
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? - **No.**
5	Whether it is to be circulated to the civil judge ? - **No.**

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GIRISHBHAI MOHANBHAI PATEL (DETENU) - Petitioner(s)

Versus

THE COMMISSIONER OF POLICE SURAT CITY &2 - Respondent(s)

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Appearance :

MS DR KACHHAVAH for Petitioner(s) : 1,MR KAMLESH KACHHAVAH for Petitioner(s) : 1,

RULE SERVED BY DS for Respondent(s) : 1 - 2.

GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 16/11/2005

ORAL JUDGMENT

1.Girishbhai Mohanbhai Patel (detenue), through his Cousin Brother-Navnitbhai Jagubhai Patel, petitioner has filed petition of habeas corpus under Article 226 of the Constitution of India challenging the order of detention dated 7/9/2005 passed by the Commissioner of Police, Surat City, respondent no.1 herein and further be pleased set the detenue at liberty forthwith.

2.It is alleged that the Commissioner of Police, Surat City has passed the order of detention, with a view to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order in the surrounding area of his residence and particularly in Varachha Police Station of Surat City in exercise of the powers conferred by Sub-Section (1) of Section 3 of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as “the PASA Act” for convenience). By a separate order of the same date, the detenue has been ordered to be detained in Nadiad District Jail at Nadiad and to be treated as Class-II detenue. The authority has also suppled the grounds of detention dated 7/9/2005.

2.1 I have heard Mr.D.R.Kachhavah, learned advocate for the petitioner. He has invited my attention to the ground of detention and then it was alleged that detenue is a bootlegger under Section 2(b) of the Act. It is further alleged that solitary criminal offence under Section 66(1)B, 65A, E, 81 and 116(2) of the Bombay Prohibition Act has been registered against him before the Varachha Police Station of the Surat City. It is further alleged that the detenue sells the illicit (I.M.F.L.) liquor of about 539 bottles-valued at Rs.16,170/- of the other state in the surrounding area of his residence in Surat City. It is further alleged that ordinary provisions of law are found insufficient to curb his anti-social activities. It is further alleged that he is indulged in said anti-social activities of selling, transporting and storing the I.M.F.L. Liquor and he has continued the same. Therefore, the impugned order of detention is passed again his as there is no other alternative.

2.2 It is submitted that in view of the matter, all the allegations made in the grounds of detention against the detenue are vague. There is no material to show that either detenue or his men have ever disturbed the public order either at the time of commission of the aforesaid solitary criminal case. There is no cogent or fresh credible material to show that either the detenue or his men have ever disturbed the public health or public order either at the time of commission of aforesaid criminal case. It is further submitted that

the detaining authority has mentioned in the grounds of detention, supplied to detenue that the activities of the present detenue were an obstacle to the public health as well as to public order, but looking to the present case, a solitary criminal offence, this bald observation cannot be taken to be decisive, as to arrive at the subjective satisfaction, that the activities of the detenue were prejudicial to the public health and public order and also even the tempo of general public life was disturbed.

2.2A The learned counsel for the petitioner has relied upon judgment of the Hon'ble Supreme Court in the case of Piyush Kantilal Mehta vs. Commissioner of Police, reported in AIR 1989 SC 491.

2.3 On the other hand, Mr.N.D.Gohil, learned Asst. Public Prosecutor has tried to support the order of detention in this behalf. He has relied upon the affidavit filed by Sudhir Sinha, Commissioner of Police, Surat. He has stated that large amount of liquor has been imported by the petitioner and therefore, there is a breach of public order and not only law and order. It is submitted that there is sufficient material on record of the case disclosing that the anti social activities of the detenue are having the potential to disturb the public order. In such cases, even though there is only a solitary case registered against the detenue, if the same is having the potential to disturb the public order, as per the settled legal position laid down by this Hon'ble Court aw well as upheld by the Hon'ble Supreme Court of India, there need not be any past history to influence the mind of the detaining authority for passing an order of detention against the detenue. Therefore, after carefully considering all the relevant materials placed before me, the facts and circumstances of the case as well as the legal provisions applicable to the facts of the case, as I was subjectively satisfied that the anti-social activities of the detenue have the potential to disturb the public order and therefore, it is necessary to detain him immediately with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, I have passed the order of detention against the detenue and the same is legal, valid and proper. It was further stated that offence was registered on 19/8/2005 and he has applied for bail and he was released on 22/8/2005. After his release, he has continued his anti-social activities which have the potential to disturb the public order. Thereafter, the sponsoring authority has collected necessary materials and information with regard to the anti-social activities of the detenue and submit a proposal dated 25/8/2005 which was received by me on the same day. On receipt of the same, after following necessary

procedures and after considering the overall facts and circumstances of the case as well as the legal provisions applicable to the facts and circumstances of the case, on arriving at the subjective satisfaction that the detenue is a boot-legger as defined under Section 2(b) of the PASA Act and his anti-social activities are disturbing the public order and therefore, it is necessary to detain him immediately with a view to prevent him from acting in any manner prejudicial to the maintenance of public order and therefore, order of detention has been passed.

3.I have considered the facts and circumstances of the case and have also considered the judgment in the case of Piyush Kantilal Mehta (supra). I have also considered the judgment and order in the case of Rajubhai Pratapbhai Panpatil vs. Commissioner of Police and others in Special Civil Application No.20420 of 2005, decided by this Court (Coram:K.M.Mehta, J.) on 15/11/2005 and another judgment in the case of Nepalsing Bodansing Shekhavat v. Police Commissioner, Vadodara in Special Civil Application No.19946 of 2005, decided by this Court (Coram:K.M.Mehta, J.) on 16/11/2005 and after going through the same, I am of the view that petition is allowed. The order of detention dated 6/9/2005 is quashed and set aside. The deteune, Girishbhai Mohanbhai Patel is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly with no order as to cost. Direct service is permitted.

(K.M.MEHTA, J.)

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